



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

ONE ASHBURTON PLACE, ROOM 411

BOSTON, MASSACHUSETTS 02108

(617) 727-8352

(800) 462-OCPF

MICHAEL J. SULLIVAN
DIRECTOR

April 17, 1996
AO-96-15

Paul R. Babeu
29 Holbrook Street
North Adams, MA 01247

Re: Application of M.G.L. c. 55, ss. 13-17 to O-3 Employee

Dear Mr. Babeu:

This letter is in response to your March 4, 1996 request for an advisory opinion.

You have stated that you are currently employed as an "O-3" employee at North Adams State College. You are also a candidate for the Legislature. Based on a conversation you had with OCPF's General Counsel, I understand that you work at the Admissions office on a full-time basis. You are supervised and report to the Director of the office. You are responsible for recommending acceptance or rejection of individual applications.

You have asked for a description of the constraints placed on your campaign finance activity because of your employment.

Section 13 of M.G.L. c. 55, the campaign finance law, states that "No person employed for compensation, other than an elected officer, by the commonwealth or any city or town shall directly or indirectly solicit or receive any gift, payment, contribution, assessment, subscription or promise of money or other thing of value for the political campaign purpose of any candidate for public office or of any political committee or for any political purpose whatever" A person "employed for compensation" within the context of section 13 may, however, form a political committee to raise funds on the employee's behalf. The committee may not solicit or receive contributions from any person who is or was subject to the employee's official responsibilities or any person who has an interest in any matter in which the employee participates or participated in as part of his or her employment. See AO-94-14.

The "O-3" accounting classification is no longer used by the Comptroller. A person who formerly would have been classified as an O-3 employee has a contractual relationship with the commonwealth or one of its subdivisions. As such, the person may or may not be considered a "person employed for compensation" within the context of the campaign finance law. See AO-86-09.

Section 13 does not apply to independent contractors. An independent contractor "contracts with another to do something for him but who is not controlled by the other nor subject to the other's right to control with respect to his physical conduct in the performance of the undertaking. . . ." Compare AO-95-26 (sole

proprietor computer consultant who has a contract with a state agency as one of many clients, has no office at the agency, sets his own hours, is not supervised or controlled by the agency, and provides guidance or advice on an as-needed basis, is an "independent contractor" not subject to section 13) and AO-93-24 (volunteer fire fighter is not an independent contractor even though he sets his own hours because he is subject to supervision and control).

You are not an independent contractor since you are subject to supervision of the Director of Admissions, work for the Admissions department on a "full-time" basis during the months you are employed, and do not set your own hours. Therefore you are subject to M.G.L. c. 55, s. 13. See AO-94-01 (persons employed by the University of Massachusetts are subject to s. 13).

You should also be aware of the following provisions of the campaign finance law:

Section 14 states that "no person shall in any building or part thereof occupied for state, county or municipal purposes demand, solicit or receive any payment or gift of money" for political purposes.

Section 15 prohibits persons in the service of the commonwealth or any of its subdivisions from "giving or delivering" to any other person in the service of the commonwealth or its subdivisions, any money or other thing of value" for political purposes. The phrase "persons in the service" was intended "to include any elected, appointed or other person, regardless of compensation, who is providing significant public services to the commonwealth or one of its subdivisions or authorities." See AO-92-01 and AO-95-26. You would also be considered a person in the service of the commonwealth and therefore subject to section 15.

Section 16 states that "no person in the public service shall, for that reason, be under obligation to contribute to any political fund, or to render any political service, and shall not be removed or otherwise prejudiced for refusing to do so. "

I have enclosed a Guide to Political Activity for State, County and Municipal Employees as well as a Guide for Candidates for the Massachusetts General Court. After reviewing the enclosed materials, please call me if you have further questions.

This opinion has been rendered solely in the context of M.G.L. c. 55 and on the facts stated in your letter and in your conversation with Peter Sturges. Should you have additional questions, please do not hesitate to contact this office.

Sincerely,



Michael J. Sullivan
Director

MJS/cp
Enclosures